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November 13, 2007

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Verizon's Petitions for Forbearance in Six MSA's; WC Docket No. 06-172

Dear Ms. Dortch,

Pursuant to Section 1.1206 of the Commission's rules, COMPTEL hereby gives notice that, on November 9, 2007, the undersigned attorney had two separate meetings with FCC staff, via teleconference, with regard to the above-referenced matter. COMPTEL met separately with Ian Dilner, Wireline Legal Advisor to Chairman Martin, and with John Hunter, Chief of Staff and Senior Legal Advisor to Commissioner McDowell.

In both meetings, COMPTEL explained why it was important for the FCC, in its decision in the pending petitions, to rectify the errors in the analytical framework the Commission used to inform its predictive judgment in the *Qwest Omaha Forbearance* decision¹, and to recognize the evolution in the Commission's analysis since it rendered its decision in that matter,. The principal error in the *Qwest Omaha* framework was the failure to appreciate the importance of wholesale market competition, and the interdependence of wholesale market competition on

¹ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 04-223, FCC 05-170 (rel. Dec. 2, 2005).

the existence of non-incumbent retail market competitors. For example, as McLeod USA's exit from the Omaha market has shown, it is not enough for the Commission to assume that if a wholesale market does not exist when the competitive analysis is undertaken, that a wholesale market can develop later, simply because one type of competitor (*e.g.*, a cable company) has facilities in a market, over which it offers a retail, consumer, bundled product. While, all things being equal, a cable competitor could conceivably evolve into a wholesale carrier, it will not do so unless would-be purchasers remain in the market and continue to grow.

The fact that, today, UNE-dependant retail competitors have not migrated to the cable companies for wholesale service indicates that an adequate alternative cable wholesale offering does not exist. As the aftermath of the *Qwest Omaha Forbearance* decision demonstrates, eliminating the availability of UNEs does not foster the development of such alternative offerings. Instead it eliminates potential purchasers from the market, removing any motive for companies to create such offerings. As such, the elimination of UNEs at this time will undoubtedly frustrate—not accelerate—the emergence of a wholesale market, and will, correspondingly, reduce retail market alternatives.

Thus, unless retail competitors across all relevant end-user markets are relying to a large degree on non-Bell providers of wholesale inputs, then it would be inappropriate for the Commission to grant forbearance with respect to the inputs needed to serve this market. This is the conclusion the FCC reached in recognizing a retail broadband enterprise market that is separate and distinct from the input markets that enable retail broadband enterprise competition. Implicit, of course, in this analysis is that a retail market can only be deregulated in the presence of a wholesale market that efficiently provides all retail entrants with access to inputs at rates approaching economic cost (either through purchasing from alternative wholesale providers, self-provisioning, or purchasing the inputs from the incumbent at regulated rates):

[w]here self-deployment and purchasing from competitive LECs are not options, potential providers may obtain unbundled network elements (UNEs) from the incumbent LEC to meet these [broadband] customers' needs.²

It is equally the case that if vertically-integrated competitors are offering a competitive wholesale product, but rely on UNEs to remain profitably in both the

² *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, WC Docket No. 06-125, FCC 07-180, ¶ 21 (rel. Oct 12, 2007).

wholesale and retail markets, the Commission should not discourage nascent wholesale market competition by eliminating access to UNEs. This would be a counterproductive exercise because, for example, a company that relies on UNEs to provide competition to residential consumers, but which also offers metro transmission services through the use of its own fiber facilities, could at some future point provide an adequate basis on which the FCC could comfortably grant wholesale and retail deregulation for the market addressed by the integrated carrier's own facilities. This is the same analysis explained above, but just approached from a different perspective.

Sincerely,

/s/ Jonathan Lee